

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Improve Public
Access to Public Records Pursuant to the California
Public Records Act.

R.14-11-001

(Filed November 6, 2014)

**JOINT REPLY COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY
(U 902 G), SOUTHERN CALIFORNIA GAS COMPANY (U 904 G), AND SOUTHWEST
GAS CORPORATION (U 905 G) ON PROPOSED DECISION UPDATING COMMISSION
PROCESSES RELATING TO POTENTIALLY CONFIDENTIAL DOCUMENTS**

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I. INTRODUCTION AND BACKGROUND

Pursuant to Rule 14.3 of the California Public Utilities Commission's (Commission or CPUC) Rules of Practice and Procedure, San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCalGas), and Southwest Gas Corporation (Southwest Gas) (collectively, the Responding Utilities) hereby submit their reply comments on the Proposed Decision of Commission President Picker Updating Commission Processes Relating to Potentially Confidential Documents, dated June 28, 2016 (PD).

The Responding Utilities take this opportunity to reply to other parties' opening comments on the confidentiality designation rules and processes described in the PD. The Responding Utilities agree with other parties that: (1) extraordinary types of confidential records and information will require exceptions to the confidentiality designation rules contained in the PD, and that alternate processes for these records and information will need to be developed; (2) the PD should not become effective immediately after the Commission votes it out, but should allow the utilities sufficient time to comply with the new rules and processes; and (3) providing submitting parties with notice and opportunity to be heard is consistent with the practices of other public agencies who, like the Commission, face similar requests for public records.

II. DISCUSSION

A. **Alternate processes and exceptions to the proposed confidentiality designation rules should be developed in order to properly ensure that certain types of confidential records and information are not inadvertently or inappropriately disclosed.**

Multiple parties assert that certain extraordinary types of records and information will require exceptions to the confidentiality designation rules contained in the PD and that alternate processes for these records and information will need to be developed.¹ The Responding Utilities agree. As SCE and PG&E note, there are certain records which are so complex or voluminous that parties may not be able to individually identify each piece of confidential information or identify the specific reason for its confidentiality, at least not in the first instance.² Similarly, CIC notes that, in addition to voluminous records, there are certain types of documents – such as electronically submitted form documents – that do not permit the submitting party to mark individual fields or specific information as confidential.³ “Exceptions for these situations,” CIC notes, “are necessary to avoid the implication that parties have waived confidentiality....”⁴ The Responding Utilities agree. Certain types of information cannot be reasonably or readily marked or justified in detail, such as GIS mapping data, or oral communications made via phone calls or meetings. Some complex or voluminous submissions may also be difficult to conform to the PD’s new process without risking delays.

Although cognizant that additional processes to implement the PD will be developed later in this proceeding,⁵ the PD should be modified *now* to ensure that confidential information and records which cannot conform neatly to the PD’s new confidentiality designation rules are not inadvertently

¹ See Joint Opening Comments of Southern California Edison Company (SCE) and Pacific Gas and Electric Company (PG&E), dated July 18, 2016, at 6; Opening Comments of Communications Industry Coalition (CIC), dated July 18, 2016, at 3,7.

² Joint Opening Comments of SCE and PG&E, at 6.

³ Opening Comments of CIC, at 7.

⁴ *Id.*

⁵ See PD, at 2, 5, 20.

or inappropriately disclosed. The Responding Utilities also note that some of these issues could also be obviated by providing utilities with notice and the opportunity to be heard before releasing utility submitted information, as explained in detail below.

B. Parties must be provided with notice and opportunity to be heard before the Commission can release utility submitted information, and such devices are consistent with the practices of other public agencies.

The vast majority of parties who submitted opening comments to the PD agree that the Commission must provide some sort of notice and opportunity to be heard, including a workable appeals process, before the Commission can publicly release utility-submitted information, either in all cases, or at least in cases in which the Commission's staff disagrees with the utility's confidentiality designations.⁶ Virtually all of these parties, including the Responding Utilities, note that such notice and opportunity to be heard is necessitated by the most basic requirements of due process.⁷ Several parties also note, however, that such requirements are consistent with the precedent and practices of other public agencies that are subject to record requests under the California Public Records Act (CPRA) or the Freedom of Information Act (FOIA).

CIC explains, for example, that the Federal Communications Commission notifies a submitting party when a request for confidential information has been made, provides the submitting party with 10 days to justify why its information should not be disclosed, allows the submitting party to appeal the agency's determination using an application for review, and even provides for judicial review to challenge the agency's decision on the application.⁸ The ISPs

⁶ See, e.g., Opening Comments of CIC, at 7-9; Opening Comments of AT&T, dated July 18, 2016, at 6, 8; Joint Opening Comments of SCE and PG&E, at 6-9; Opening Comments of California Water Association (CWA), dated July 18, 2016, at 5-6; Opening Comments of CALTEL, dated July 14, 2016, at 4; Joint Opening Comments of SDG&E, SoCalGas, and Southwest Gas, dated July 18, 2016, at 2-4; Opening Comments of the Independent Storage Providers (ISPs), dated July 18, 2016, at 3-7.

⁷ See, e.g., Opening Comments of the ISPs, at 3-4; Joint Opening Comments of SDG&E, SoCalGas, and Southwest Gas, at 2-3; Opening Comments of CWA, at 5-6; Joint Opening Comments of SCE and PG&E, at 7; Opening Comments of AT&T, at 8; Opening Comments of CIC, at 7-9.

⁸ Opening Comments of CIC, at 8-9 (citing 47 C.F.R. § 0.461(d)(3); 47 C.F.R. § 0.461(t), 47 C.F.R. § 0.461(i)(1); 47 C.F.R. § 0.461(i)(4) and 47 C.F.R. § 0.461(i)).

similarly note that the California Air Resources Board (CARB), the California Energy Commission (CEC), and the Federal Energy Regulatory Commission (FERC) all provide submitting parties with notice and opportunity to be heard before releasing information which is claimed to be confidential.⁹ SCE and PG&E note that even the CPUC has allowed utilities to challenge staff determinations and appeal to the full Commission in other contexts.¹⁰

These practices and precedents are powerful evidence that what the Responding Utilities and other parties are asking for is not extraordinary, but typical procedures adopted by other public agencies in order to ensure that due process is met and that confidential information is not inadvertently disclosed. As such, the PD should be modified to include language providing submitting parties with the right to notice and opportunity to be heard, in line with procedures adopted by other public agencies.

C. The PD's confidentiality designation rules should not become effective immediately, but should give the utilities sufficient time to comply with the new rules and processes.

SCE and PG&E request that the PD, if adopted, not become effective immediately after the Commission votes it out so that any utility planning to file a large application will have sufficient time to comply with the new confidentiality designation rules.¹¹ The Responding Utilities support this position. As previously noted in this proceeding, the utilities submit vast amounts of various types of information to the Commission through a variety of types of records.¹² As such, the confidentiality rules contained in the PD, if adopted, would place a significant burden on the

⁹ Opening Comments of ISPs, at 5-7 (noting provisions for written not of request for disclosure, written notice of determination, request for reconsideration by the full Commission, setting the effective date to allow submitter right of seek reconsideration or appeal to court, and opportunity to comment).

¹⁰ Joint Opening Comments of SCE and PG&E, at 6-7 (stating that, for example, the Commission's gas and electric citation processes allow utilities to appeal staff-imposed citations to the full Commission).

¹¹ Joint Opening Comments of SCE and PG&E, at 5-6.

¹² See, e.g., Joint Comments of SCE, SDG&E, SoCalGas, and Southwest Gas on Rulemaking 14-11-001 and Proposed Draft Proposal from the Scoping Memo Issued on August 11, 2015, dated Sept. 11, 2015, at 16; Joint Comments of SCE, SDG&E, SoCalGas, and Southwest Gas on Rulemaking 14-11-001 and Proposed General Order 66-D, dated Dec. 22, 2014, at 16-17.

Responding Utilities. This is especially true considering some of the large or complex formal or informal submissions that could be on the Responding Utilities' near horizons.¹³ Indeed, the burden on SoCalGas and Southwest Gas will be particularly acute because they are not electric utility companies, and are not subject to Decision (D.) 06-06-066. As such, unlike the electric utilities, they are not accustomed to the similar confidentiality designation procedures that D.06-06-066 requires. With these issues in mind, the Responding Utilities respectfully request that the confidentiality rules contained in the PD, if adopted, not become effective for at least 60 days after the Commission votes it out in order to provide sufficient time for the utilities to comply with the new confidentiality designation rules.

III. CONCLUSION

For the reasons set forth above, SoCalGas, SDG&E, and Southwest Gas recommend that the Commission modify the PD as requested herein.

Respectfully submitted,¹⁴

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¹³For example, utilities provide voluminous and/or complex submissions of confidential information to Energy Division on a regular basis in response to data requests, some of which are related to formal proceedings, such as Energy Efficiency Rolling Portfolios (R.13-11-005); Statewide Marketing, Education and Outreach (A.12-08-007); and Low-Income Programs (A.14-11-007 et. al). As also noted by PG&E, Safety and Enforcement Division also frequently submits informal data requests to audit the utilities' gas line of business, sometimes on an expedited basis. See Joint Opening Comments of SCE and PG&E, at 4.

¹⁴As permitted by Rule 1.8(d), Counsel for SoCalGas and SDG&E has been authorized to sign the Responding Utilities' Reply Comments on behalf of Southwest Gas.